IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 6937 OF 1999

Mohan S/o. Dattatraya Dalal]
age about 40 years, Occ: Service]
R/o. Revenue Colony, Shirur]
(Ghodnadi), Tq. Shirur,]
Dist : Pune]..Petitioner

versus

1. The Chief Officer,]
Municipal Council, Shirur]
(Ghodnadi), Tq. Shirur,]
Dist : Pune]

2. The State of Maharashtra]
through its Secretary, Urban]
Development Department,]
Mantralaya, Bombay - 32]

3. Mrs. Kalpana Hiralal Patel]
age : Major, Occ: Service]
R/o. Revenue Colony, Shirur]
(Ghodnadi), Tq. Shirur,]
Dist : Pune]..Respondents

Shri M. V. Aiya Advocate for the Petitioner.

Shri R. S. Apte Advocate for the Respondent No.1.

Shri C. R. Sonawane, AGP for the Respondent No.2.

CORAM : R.M.S. KHANDEPARKAR &
NARESH H. PATIL, JJ.

DATE : 17TH AUGUST, 2006

ORAL JUDGMENT :

1. Heard learned Advocate for the Petitioner and

the Respondent Nos. 1 and 2. None present for the Respondent No.3, though served.

2. By the present Petition, the Petitioner is seeking direction to the Respondent No.1 for compliance of their obligation under the provisions of Maharashtra Regional and Town Planning Act and particularly in relation to the construction stated to have been illegally carried out by the Respondent No.3 in Plot No. 6 in Revenue Colony, Shirur (Ghodnadi), Taluka Shirur, Dist : Pune, and further to proceed with the matter arising out of the notice issued by the Respondent No.1 to the Respondent No.3 on 16.6.1999.

3. At the time of admission and grant of interim relief in the Petition, this Court had directed the Respondent No.1 to proceed further in terms of the notice dated 16.6.1999 issued to the Respondent No.3, with a further direction to the Respondent No.3 to stop user of the unauthorised construction.

4. The case of the Petitioner is that the Respondent No.3 has carried out illegal construction

to the staircase on the first floor as well as on the common passage and approach road to the said building. As against this, it has been orally informed by the learned Advocate for the Respondent No.1 that pursuant to the direction issued under the interim order passed in this petition, the Respondents have already demolished the staircase on the ground floor, as well as first floor, railings of the slab over the porch, RCC water tank over the staircase, and the slab over the first floor. The claim in that regard is sought to be seriously disputed on behalf of the Petitioner.

5. Inspite of specific averments having been made in the Petition about the illegal construction by the Respondent No.3 and further description thereof being given in the Petition, none of the Respondents have chosen to counter the said statements made by the Petitioner and corroborated by the Affidavit in Support thereof. Though the learned Advocate for the Respondents has stated that pursuant to the impugned order the said illegal construction has been demolished, the same is disputed on behalf of the Petitioner. Nevertheless, the learned Advocate for the Petitioner has fairly

conceded that some portion of the illegal construction has been demolished.

6. Upon hearing the learned Advocates, and on perusal of the record, and, in the facts and circumstances, we are left with no alternative but to arrive at a conclusion that there is no dispute between the parties about illegal construction having been done by the Respondent No.3 as described in the Petition. It is also a matter of record that the Respondent No.1 in exercise of its statutory obligation under the said statute had issued a notice dated 16.6.1999 directing the Respondent No.3 to demolish the illegal construction. This Court after hearing the parties and taking into consideration the materials on record by way of interim order had directed the Respondent No.1 to proceed further in accordance with the provisions of law in relation to the notice issued by the Respondent No.1 to the Respondent No.3 on 16.6.1999. All these facts clearly establish the illegal construction having been done by the Respondent No.3 in the plot in question and further that the same warranted action by the Respondent No.3 for the demolition thereof.

7. In the background of the above facts therefore and there being no counter filed by any of the Respondents disputing the claim of the Petitioner, we are left with no alternative than to allow the Petition in terms of the prayer clause (a), only rider to be added thereto is that in case some part of the illegal construction is already demolished as stated on behalf of the Respondent No.1, liberty to the Petitioner to approach the Respondent No.1 within one month again in relation to any illegal construction still remaining to be demolished and on such representation being made by the Petitioner to the Respondent No.1, the Respondent No.1 shall take appropriate steps in accordance with the provisions of law and ensure that no illegal construction remains at the site without being demolished, and, the said exercise to be done within a period of six months from the receipt of the representation. Rule is made absolute accordingly with no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(NARESH H. PATIL, J.)